

Change in New York Campaign Finance Laws: Closing the LLC Loophole and Aggressive Campaign Finance/Pay-to-Play Proposals

March 2019

The New York legislature has taken steps to close a previous “LLC loophole” in its campaign finance laws, and the Governor has also proposed aggressive pay-to-play and corporate contribution bans. These changes introduce additional complexity for limited liability companies (LLCs) and other corporate entities in navigating the state’s campaign finance regulatory maze. It is important to consult counsel to ensure compliance with the new LLC requirement and to consider the potential pay-to-play implications of the Governor’s proposals.

First, Governor Cuomo signed into law a bill that requires each LLC that makes an expenditure or contribution for political purposes to disclose the identity of all direct and indirect owners of the membership interests in the LLC as well as the proportion of each direct or indirect member’s ownership interest in the LLC. Importantly, the bill would attribute LLC contributions to each of the LLC’s members in proportion to their ownership in the LLC for the purposes of the contribution limits, although the LLC itself would also be subject to a \$5,000 aggregate annual contribution limit. Thus, under this new law, a contribution from an LLC would have to be within both the LLC’s \$5,000 aggregate annual limit and the limits applicable to each of the LLC’s members after the LLC’s contribution is attributed to the owners.

Prior to this bill’s enactment, the New York State Board of Elections had treated LLCs as individuals for purposes of state contribution limits, allowing LLCs to make contributions up to the much higher limits for individuals instead of the \$5,000 aggregate annual

Practice Areas

- Election Law & Government Ethics
- Federal & State Campaign Finance
- Federal & State Pay-to-Play Compliance

corporate contribution limit. The new law's attribution provision also means that owners/members of an LLC cannot circumvent the \$5,000 limit by using a number of LLCs that they own or control to make additional \$5,000 contributions.

By closing this "LLC loophole," the bill imposes a different, narrower view of permissible contributions, and LLCs and their members need to be aware of both the new information LLCs are required to report and the more demanding contribution rules. The bill, however, does not make any changes to existing law that would affect federal or New York state PACs.

Second, continuing the theme of more onerous campaign finance rules in the state, Governor Cuomo has proposed a pay-to-play contribution ban, as a part of an aggressive pending omnibus campaign finance and lobbying bill. The ban would prohibit contributions by any prospective state contractor to: (1) any officeholders of the state agencies issuing the solicitation for bids at issue or evaluating such bids, or approving or awarding the final contract sought by the contracting entity; and (2) any candidate for such office. Moreover, contributions from a prospective contractor's subsidiaries and PAC would also be covered. From the face of the legislative text, the proposed ban does not appear to reach officers or directors of prospective state contractors.

In this proposal, the prohibition period would begin to run from the earliest time that a request or solicitation for proposals or invitation for bids is publicly posted. However, agency requests for information would not trigger the prohibition period. The prohibition period for successful bidders would continue for one year after the final contract is awarded and approved by the relevant state authorities. For unsuccessful bidders, the prohibition period would end at the time the final contract is awarded and approved.

Further, Governor Cuomo has proposed prohibiting corporate contributions to New York state candidates altogether. Of course, if both provisions are enacted into law, the corporate contribution ban would make the pay-to-play contribution ban moot with respect to corporate contractors.

As New York's campaign finance laws continue to change (perhaps drastically if Governor Cuomo's numerous proposals pass the legislature), it is important for LLCs and other corporate entities to consult counsel and ensure they are not running afoul of contribution limits or prohibitions.